UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/676,195
Filing Date: September 30, 2003
Appellant(s): FIKES ET AL.

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John C. Pokotylo
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on July 5th 2007 appealing from the Office action

mailed on October 3rd 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings

which will directly affect or be directly affected by or have a bearing on the Board's decision in

the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in

the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is

correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0050863   Radwin   09-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 2-5, 8-15, 17-19, 21-28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated

by Radwin.

Claim 2: Radwin discloses a system for automatically targeting Web-based advertisements,

comprising:

(a) an indexer to identify advertisements relative to a query, wherein identified

advertisements describe characteristics relative to at least one of a product and a service

(page 4, parag. 34-36);

(b) a scorer to score the advertisements according to match between the query and the

characteristics of the identified advertisements (page 4, parag. 34-36); and

(c) a targeting component to provide at least some of the advertisements as Web-based

content,

wherein a numerical score is assigned to the identified advertisements based on a degree

of the match (page 2, parag. 22 and page 5, parag. 40-41 and 46).

Claim 3: Radwin discloses a system according to claim 2, wherein the numerical score is

determined relative to at least one of a content match and a categorical match (page 4, parag. 39).

Claim 4: Radwin discloses a system according to claim 2, further comprising: a sorter to sort at least some of the identified advertisements by the numerical score (page 5, parag. 40-41).

Claim 5: Radwin discloses a system according to claim 4, further comprising: a selector to select at least some of the sorted identified advertisements relative to a predefined threshold (page 5, parag. 40-41).

Claim 8: Radwin discloses a system for automatically targeting Web-based advertisements, comprising:

(a) an indexer to identify advertisements relative to a query, wherein identified advertisements describe characteristics relative to at least one of a product and a service (page 4, parag. 34-36);

(b) a scorer to score the advertisements according to match between the query and the characteristics of the identified advertisements (page 4, parag. 34-36); and

(c) a targeting component to provide at least some of the advertisements as Web-based content;

(d) a ranker to rank the identified advertisements using a selection criteria and ordering at least some of the ranked identified advertisements (page 5, parag. 40-41); and

(e) a selector to select at least some of the ordered identified advertisements relative to a ranking cutoff (page 5, parag. 40-41).

Claim 9: Radwin discloses a system according to claim 8, further comprising: an evaluator to evaluate the selection criteria based on at least one of a fixed cost, variable cost, and random factor associated with one or more of the identified advertisements (page 1, parag. 3-4).

Claim 10: Radwin discloses a system according to claim 9, wherein at least one of an acceptable fixed cost and an acceptable variable cost is applied as the selection criteria (page 5, parag. 40-41 and page 6, parag. 51).

Claim 11: Radwin discloses a system according to claim 9, wherein at least one of the fixed cost and the variable cost is provided as part of the characteristics of the identified advertisements (page 5, parag. 40-41 and page 6, parag. 51).

Claim 12: Radwin discloses a system according to claim 2, further comprising: an advertising creative generator to generate an advertising creative based on the characteristics of at least one such identified advertisement (page 5, parag. 40-41).

Claim 13: Radwin discloses a system according to claim 12, wherein the advertising creative is provided as part of the at least some of the advertisements (page 5, parag. 40-41 and parag. 46).

Claim 14: Radwin discloses a system according to claim 12, wherein the advertising creative is provided as at least one of a hint provided with at least one such identified advertisement,

predefined text, a precomputed advertising creative, and a cached advertising creative (page 2, parag. 22; page 4, parag. 34-36 and page 5, parag. 44, 46).

Claim 15: Radwin discloses a method for automatically targeting Web-based advertisements, comprising:

(a) identifying advertisements relative to a query, wherein identified advertisements describe characteristics relative to at least one of a product and a service (page 4, parag. 34-36);

(b) scoring the advertisements according to a degree of a match between the query and the characteristics of the identified advertisements (page 4, parag. 34-36); and

(c) providing at least some of the advertisements as Web-based content (page 2, parag. 22 and page 5, parag. 46).

Claim 17: Radwin discloses a method according to claim 15, further comprising: determining the numerical score relative to at least one of a content match and a categorical match (page 4, parag. 39).

Claim 18: Radwin discloses a method according to claim 15, further comprising: sorting at least some of the identified advertisements by the numerical score (page 5, parag. 40-41).

Claim 19: Radwin discloses a method according to claim 18, further comprising: selecting at least some of the sorted identified advertisements relative to a predefined threshold (page 5, parag. 40-41).

Claim 21: Radwin discloses a method according to claim 15, further comprising: ranking the

identified advertisements using a selection criteria; and ordering at least some of the ranked identified advertisements (page 5, parag. 40-41).

Claim 22: Radwin discloses a method according to claim 21, further comprising: selecting at least some of the ordered identified advertisements relative to a ranking cutoff (page 5, parag. 40-41).

Claim 23: Radwin discloses a method according to claim 21, further comprising: evaluating the selection criteria based on at least one of a fixed cost, variable cost, and random factor associated with one or more of the identified advertisements (page 1, parag. 3-4).

Claim 24: Radwin discloses a method according to claim 23, further comprising: applying at least one of an acceptable fixed cost and an acceptable variable cost as the selection criteria (page 5, parag. 40-41 and page 6, parag. 51).

Claim 25: Radwin discloses a method according to claim 23, further comprising: providing at least one of the fixed cost and the variable cost as part of the characteristics of the identified advertisements (page 5, parag. 40-41).

Claim 26: Radwin discloses a method according to claim 15, further comprising: generating an advertising creative based on the characteristics of at least one such identified advertisement (page 5, parag. 40-41).

Claim 27: Radwin discloses a method according to claim 26, further comprising: providing

the advertising creative as part of the at least some of the advertisements (page 5, parag. 40-41 and parag. 46).

Claim 28: Radwin discloses a method according to claim 26, further comprising: providing the advertising creative as at least one of a hint provided with at least one such identified advertisement, predefined text, a precomputed advertising creative, and a cached advertising creative (page 2, parag. 22; page 4, parag. 34-36 and page 5, parag. 44, 46).

Claim 30: Radwin discloses an apparatus for automatically targeting Web-based advertisements, comprising:

(a) means for identifying advertisements relative to a query, wherein identified advertisements describe characteristics relative to at least one of a product and a service (page 4, parag. 34-36);

(b) means for scoring the advertisements according to a degree of a match between the query and the characteristics of the identified advertisements (page 4, parag. 34-36); and

(c) means for providing at least some of the advertisements as Web-based content (page 2, parag. 22 and page 5, parag. 46).

Claims 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Radwin.

Claim 6: Radwin discloses a system for automatically targeting Web-based advertisements, comprising:

(a) an indexer to identify advertisements relative to a query, wherein identified advertisements describe characteristics relative to at least one of a product and a service (page 4, parag. 34-36);

(b) a scorer to score the advertisements according to match between the query and the characteristics of the identified advertisements (page 4, parag. 34-36); and

(c) a targeting component to provide at least some of the advertisements as Web-based content, except for a filter to filter the identified advertisements relative to at least one of a country, locale, language, and daily budget. Radwin discloses the use of demographic profiling in the art (page 2, parag. 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Radwin, with a filter for specific characteristics and features since it was known in the art that a filter to filter the identified advertisements relative to at least one of a country, locale, language, and daily budget is used to enhance the efficiency of the targeted advertisement by focusing the selection and ensuing delivery of the advertisement to users who are more likely to purchases the items advertised.

Claim 20: Radwin discloses a system according to claim 15, except for further comprising: a filter to filter the identified advertisements relative to at least one of a country, locale, language, and daily budget. Radwin discloses the use of demographic profiling in the art (page 2, parag. 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Radwin, with a filter for specific characteristics and features since it was known in the art that a filter to filter the identified advertisements relative to at least one of a country, locale, language, and daily budget is used to enhance the efficiency of the targeted advertisement by focusing the

selection and ensuing delivery of the advertisement to users who are more likely to

purchases the items advertised.

(10) Response to Argument

<u>Appellants argue</u>

Regarding claims 2-5, 15-18 and 30, appellants argue that the Radwin reference does not teach

the feature of "a degree of match between the query and the characteristics of the identified

advertisements" (page 11). Furthermore, the appellants argue that the examiner has applied an

improper standard in the interpretation of the claim limitations since the examiner's

interpretation is not consistent with the specification and those skilled in the arts (page 12).

Specifically, appellants argue that the feature of "degree" of match is absent in the Radwin

reference and that the limitation is not met by a non-Boolean feature (pages 12-14).

<u>Examiner's response</u>

The examiner respectfully disagrees as the Radwin reference teaches the feature of a degree of

match between the query terms and the ad characteristics via the search term index and the ad

repository component in the selection of the ad to be shown (see Figure 1 and parag. 34-41).

The Radwin references disclose that the search terms are first matched with ad types in the

search terms index (Figure 4) then subsequently matched with specific advertisements in the ad

repository (Figure 5). The examiner would like to point out that the selection is not restrictive to

Boolean parameters as indicated by the values such as 2, 9 and 7 shown in element 47 of

Figure 5 and the subsequent summation mechanism of elements 40, 45 and 47 of Figure 5 to

arrive at the specific ads (A1, A2, B1...) indexed in element 44 (see parag. 38 to 41). In the

Messer example, the following selection matrix illustrates an evaluation of ads A1, A2 and An:

Ad Index	Keyword value	Weight	Cumulative
A1	0	2	2
A2	1	0	1
An	0	9	9

From this matrix, the ad selected is An with a value of 9 (which is a non-Boolean value) based on the query search terms. Of course, the matrix is expanded to include further ad types as provided by the search term index.

Furthermore, in response to appellants' argument that examiner failed to read claims in light of the specification, appellants misinterpreted the principle that claims are interpreted in the light of the specification. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. In the instant claims, a skilled artisan's interpretation of a degree of match would include the values of 0 (no match) and 1 (a perfect match).

Appellants argue

Regarding claim 8, appellants argue that the Radwin reference does not teach the feature of "a ranker to rank the identified advertisements using a selection criteria and ordering at least some of the ranked identified advertisements and a selector to select at some of the ordered identified advertisements relative to a ranking cutoff" (pages 15-16). Appellants argue that the ranking cutoff of Radwin is not directed to the selection process (page 16).

Examiner's response

The examiner respectfully disagrees as the Radwin reference teaches the overall scheme of a search term index which filters the ad type to be further matched in the ad repository based on the terms query. Figure 5 illustrates a ranking of the ads based on various parameters (see

selection matrix above) and the ensuing selection of the highest ranked advertisements to be

shown with the query results. The cutoff and ordering features are implicitly present as the

highest ranked advertisements are displayed (if not all advertisements would be shown thus

mooting the targeted advertisement feature). The examiner notes that selectively changing the

weight values based on updated advertising agreement (e.g. an advertiser seeking higher

display rates) would lead to modifying the selection process as the ranking and cutoff are

modified (parag. 41).

Appellants argue

Regarding claims 9-11 and 23-25, appellants argue that the Radwin reference does not teach

the feature of "an evaluator to evaluate the selection criteria" based on various variables such

as fixed cost, variable cost, and random factor (pages 17-18). Appellants state that the CPM

("cost per 1000 impressions") model is not commensurate to being a factor in the evaluation

process.

Examiner's response

The examiner respectfully disagrees as the CPM model is specifically based on a economic

cost model in which the advertisers pay a specific amount for 1000 ads impressions. The

examiner notes that the Radwin reference illustrates this feature allowing the weight values to

be modified based on updated advertising agreement thus affecting the selection process as the

ranking and cutoff are modified (parag. 41).

Appellants argue

Regarding claims 12-14 and 26-28, appellants argue that the Radwin reference does not teach

the feature of "an advertising creative generator" (page 18). Appellants further expand by

defining an advertising creative as to mean "the content rendered to, and perceived by, a user or users" by citing various portions of the specification (page 19).

Examiner's response

In response to appellants' argument that examiner failed to read claims in light of the specification, appellants misinterpreted the principle that claims are interpreted in the light of the specification. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. In the instant claims, a skilled artisan's interpretation of "an advertising creative generator" is met by the selection and generation of the advertisement displayed along with the query results.

Appellants argue

Regarding claims 19 and 22, appellants argue that the Radwin reference does not teach the feature of "selecting at least some of the sorted identified advertisements relative to a predefined threshold" (page 22).

Examiner's response

The examiner respectfully disagrees as Figure 4 shows an ads filtering scheme via the search term index to be further matched in the ads repository (thus a sorting of the ads). Figure 5 illustrates a ranking of the ads based on various parameters (see selection matrix above) and the ensuing selection of the highest ranked advertisements to be shown with the query results. The cutoff and ordering features are implicitly present as the highest ranked advertisements are displayed (if not all advertisements would be shown thus mooting the targeted advertisement feature). The examiner notes that selectively changing the weight values based on updated advertising agreement (e.g. an advertiser seeking higher display rates) would lead to modifying the selection process as the ranking and cutoff are modified (parag. 41).

Appellants argue

Regarding claims 6 and 20, appellants argue the Radwin reference is teaching away from the inclusion of a filter based on various parameters such as location, language and daily budget (pages 22-24).

Examiner's response

In response to applicant's argument that prior art reference(s) teach away from examiner's interpretation, examiner asserts disclosed examples of the state of the art do not constitute a teaching away from a broader disclosure. In re Susi, 169 USPQ 423, 426 (CCPA 1971). In the instant case, parameters such as location, language and daily budget are disclosed by Radwin as showing various parameters used in similar targeted advertising schemes. The examiner notes that the addition of these parameters to the method of Radwin would be well within the purview of skilled artisan in the advertising art since, contrary to appellants' assertion, the inclusion of additional parameters would enhance the accuracy of the targeted advertising. The Radwin reference teaches the feature of a user profile thus the addition of a location parameter would further customized the ads selection such as ads for a local business. As an illustration, it would be beneficial to present ads from local restaurants for a user initiating a query on Italian restaurants with a zip code filter. The Radwin reference already includes the filter/sorting feature (ad search index) thus the inclusion of additional filtering features would have been obvious because a particular known technique was recognized as part of the ordinary capabilities of a skilled artisan.
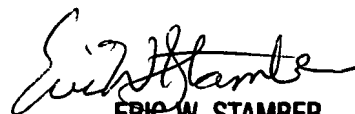
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

NVT

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